

19 January 2015

**To: Secretariat
Commerce Committee
Parliament House
Wellington**

SUBMISSION OF THE CHRISTCHURCH CITY COUNCIL ON THE SHOP TRADING HOURS AMENDMENT BILL

Introduction

1. The Christchurch City Council (**the Council**) thanks the Committee for the opportunity to make this submission.
2. The Council wishes to appear in support of its submission. It will be represented by Councillor Ali Jones and appropriate staff.
3. The Council submits that whether or not there should be Easter Sunday trading is a matter that should be decided at a national level so there is national consistency.
4. While it might seem ideal from a community engagement perspective that individual communities can choose whether shops are open on Easter Sunday in the whole or part(s) of their district, the cost of doing so (for both Councils and business) and the resulting confusion of different rules in different parts of the country is not desirable.
5. The Council's submission below provides some background on the Easter Sunday trading issue from 2006, then presents its arguments in support of national legislation.

Background - Council's Submission in 2006 on the Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill

6. The Council made a submission on the above Bill in 2006. That Bill would have required territorial authorities to make decisions (by a simple resolution) on whether retail shops in their districts should be open on Easter Sunday. Before making any decision, the Council had to consult with their communities using the special consultative procedure in the Local Government Act 2002.
7. The approach Council took in its 2006 submission was different from Local Government New Zealand's position, which supported local authorities making the decision.
8. The Council opposed the 2006 Bill as it considered the subject matter of the Bill concerned an issue of national interest that should be decided by central government, not local government.
9. It felt that whether shops should be open for trading on Easter Sunday was a matter of relevance to the whole of New Zealand, not just individual districts. It also believed that local government should not be forced to carry the cost of

consultation on this issue; a cost that would be replicated throughout the country by every authority.

10. In addition, the Council considered that if the issue was decided on a local basis there would be a complete lack of consistency nationwide, which would be undesirable, particularly between neighbouring Councils.
11. The Council pointed out that inconsistency between neighbouring Councils had already occurred as a result of other decisions required to be made at a local level, and gave the example of the Gambling Act 2003. The Council's submission finished off by stating:

"The Council recognises that in some circumstances, central government should leave matters to be decided at a local level, in order to retain a degree of practicable flexibility, and individual authorities' freedom to choose, following full consideration being given to community views. However, in this instance, the Council considers the interests of its community, and other local communities, would be better served if the issue of Easter trading is decided on a nationwide basis.

The Council urges the Select Committee to consider an alternative solution to passing this Bill. The solution needs to address whether or not retail shops should be able to trade at Easter, and could reintroduce the ability to apply for an exemption as was provided for in the Shop Trading Hours Act 1977, particularly in light of the fact that exemptions given under that Act have continued in force, despite the repeal of that Act, for Queenstown and Central Taupo."

Council's submission on this Bill - still in support of nationwide legislation

12. For the same reasons given by the Council in 2006, it considers the issue of Easter Sunday trading is a matter that should be decided at a national level. One clear decision is needed that will apply throughout the country.
13. In 2006 there was not the same focus by central government on reducing red tape as there has been recently. Red tape reduction provides an additional reason for a national approach being taken to this matter.
14. The Rules Reduction Taskforce was given the job of identifying rules and regulations which are not fit-for-purpose and which impose unnecessary bureaucratic burdens on property owners and businesses. Both central and local government were called upon 'to stop making more loopy rules'. The Taskforce identified in its report, released this year that:

*"Loopy rules not only annoy property owners, workers and tenants, they also frustrate agencies with the job of enforcing them, such as councils. They add **needless complexity, clog up decision-making processes and add unnecessary cost.**" (Council's emphasis)*

15. The Council submits that this Bill will not reduce red tape and it will create the 3 'loopy rule' problems identified by the Taskforce:

It will have the effect of adding complexity to the issue of Easter Sunday trading.

There are already a number of exemptions for certain types of traders on Easter Sunday: the Shop Trading Hours Act Repeal Act 1990 allows Easter Sunday trading for shops such as dairies, take away shops and garages, souvenir shops, duty free shops, shops at passenger terminals, pharmacies, shops at bona fide exhibitions or shows, and an amendment to the Act for garden centres as well as exemptions for a number of areas in New Zealand carried over from the 1977 Act. This means there is already a level of complexity around Easter Sunday trading.

There are 67 authorities that will need to consider whether or not to consult on the issue of Easter trading (61 territorial authorities and 6 unitary authorities). The result of that consultation will see the whole or parts of districts where Easter Sunday trading may also be able to occur. Adding those places to the current list, will make the position significantly more complex.

It is not clear from the background information on the Bill how easy staff at the Ministry of Business, Employment and Innovation (MBIE) consider this changed level of regulation will be to enforce. There is also no information on the additional cost for MBIE, particularly as there does not appear to be an infringement regime associated with enforcement action against anyone illegally conducting Easter Sunday trading.

It will serve to clog up decision-making processes by providing for yet another special consultative procedure that Councils must carry out with their communities, on something that concerns one day a year.

The Council is not suggesting that Easter Sunday is not a significant day for many people in its community, but it does not believe that it, and its communities, time and effort should be invested in consulting and deciding on this issue, when it would be an easy matter for Parliament to consult, through this Bill, or an amended Bill, and a permanent clear decision made.

The Bill also provides that Councils must review their initial decisions after five years. This means the consultation process throughout the country will be replicated.

Parliament does not have the same constraint on it when making a decision/bringing an Act into force. It does not have to review its decision to see if it is still appropriate after a certain length of time. Parliament can simply carry out a review at any time, as appropriate to its other programmes of work.

This Bill also adds unnecessary cost, for Councils and their communities, particularly the retail sector.

The departmental disclosure statement for the Bill states there has been no analysis on the size of the potential costs and benefits of the Bill. It simply notes: "*The RIS acknowledges that there will be costs for territorial authorities to create bylaws. However, the analysis considered that the potential economic benefit to the area to allow shop trading on Easter Sunday **may** offset that cost.*"

To say the cost to territorial authorities 'may' be offset by the economic benefit to the area is not sufficient to justify this legislation. The Rules Reduction Taskforce stated that in order to stop making loopy rules decision-makers need to '*include a cost-benefit analysis prior to development*'. The Select Committee should not be recommending this Bill be made when there has been no proper analysis of the costs and benefits.

A special consultative procedure¹, can cost the Council anywhere between \$12-20,000 (and sometimes more), depending on how many submissions are made. Assuming a figure of \$15,000 for a special consultative procedure on this issue, and multiplying this by 67 territorial and unitary authority's results in a figure of over \$1m for consultation on this one issue (a cost that would no doubt be higher, when consultation has to be repeated in 5 years' time).

A further cost to Councils will simply come from the fact the Bill gives the Council a decision-making role. This is likely to lead to confusion in the community over the enforcement of Easter Sunday trading, and that will also increase the workload for Councils; simply from having to deal with and hand on complaints to MBIE, when they are made to the Council.

There is also no analysis at all in the regulatory impact statement in relation to the cost to businesses, particularly nationwide chains, of having to submit to 67 different authorities when each authority consults, as well as the costs on such businesses of managing what shops are or are not allowed to open in different parts of the country.

As noted above, while it might seem a nice idea that communities can choose whether shops are allowed to open on Easter Sunday in the whole or part(s) of their district, the cost of doing so (for both Councils and business) outweighs the benefits.

One of the "top 10 fixes" recommended by the Rules Reduction Taskforce was that the public sector needs to establish a new customer focus. Central government can make a significant and effective contribution and maintain a New Zealand wide customer focus by dealing with this issue at a national level.

Whether or not Easter Sunday trading should be allowed is not an issue that is cost effectively made at a local community level.

16. The Cabinet Paper on the Bill from the office of the Minister for Workplace Relations and Safety states that under the current Act there are several exemptions for Easter Sunday trading in place, but notes "*there is no mechanism for creating further exemptions to the shop trading restrictions. This has created an unfair advantage for areas with the historic exemptions over the Easter period.*"
17. Adopting this Bill, as proposed, will do little to correct the unfair advantage for some areas and some businesses, because of the wide variation that will result as a result of 67 different decisions. This may simply create an even greater unfairness than currently exists.
18. The uneven playing field can be corrected by Parliament making a clear decision that applies to the whole of New Zealand: either allowing Easter Sunday trading

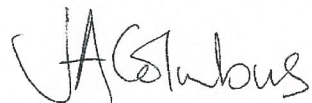
¹ The Bill proposes a special consultative procedure for a bylaw. A bylaw on this issue does not make sense as the Council would not be enforcing the Bylaw. The regulatory impact statement in recommending a bylaw instead of a policy ignores the fact there are requirements in other Acts for policies that must also use the special consultative procedure before they are adopted (eg Gambling Act 2003, Psychoactive Substances Act 2013 - requirements the Council also did not want imposed on it by central government).

across all of New Zealand, or by removing all but the standard exemptions that apply to the other days covered by the Act.

Conclusion

19. If you require clarification of any points raised in this submission, or any additional information, please contact Judith Cheyne, (Senior Solicitor, Legal Services Unit, phone 03 941-8649, email: judith.cheyne@ccc.govt.nz).

Yours faithfully

A handwritten signature in black ink, appearing to read 'A Columbus'.

Anne Columbus
General Manager, Corporate Services
CHRISTCHURCH CITY COUNCIL

